

(c) Records of an individual shall be provided to other persons upon receipt of a valid written authorization by the individual or the individual's legal guardian.

(d) Client records may be released without authorization if the request meets one of the exceptions set forth below:

1.-6. (No change.)

7. To an agency authorized to investigate allegations of abuse or neglect of an individual, for example, the Division of Child Protection and Permanency (DCP&P) in the Department of Children and Families in the case of children, the Ombudsman for the Institutionalized Elderly for individuals over 60 years of age, and Adult Protective Services in the case of an adult living in his or her own home;

8.-9. (No change.)

10:41-5.4 Records of deceased individuals

(a)-(c) (No change.)

(d) Records shall be provided to Disability Rights New Jersey in accordance with 42 U.S.C. § 15043.

10:41-5.5 Records created or held by other entities

(a) Requests for copies of Division of Child Protection and Permanency (DCP&P) reports involving the investigation of abuse and neglect of individuals served by the Division of Developmental Disabilities shall be referred to DCP&P.

(b) Requests for copies of Division of Mental Health and Addiction Services' (DMHAS) reports of investigations involving individuals served by the Division of Developmental Disabilities shall be referred to DMHAS.

(c) Requests for copies of Department's Office of Investigation (OI) reports of investigations involving individuals served by the Division shall be referred to OI.

(d) Requests for copies of Department's Office of Licensing (OOL) reports of licensing investigations involving individuals served by the Division shall be referred to OOL.

10:41-5.6 Copying fees

(a) Copies of records that may be released shall be provided in accordance with the provisions of this chapter and upon payment of the fees listed in N.J.S.A. 47:1A-5.

(b) (No change.)

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Human Rights Committees

Readoption with Amendments: N.J.A.C. 10:41A

Proposed: May 15, 2017, at 49 N.J.R. 1177(a).

Adopted: October 16, 2017, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: October 24, 2017, as R.2017 d.200, **without change**.

Authority: N.J.S.A. 30:6D-1 et seq.

Effective Dates: October 24, 2017, Readoption;
November 20, 2017, Amendments.

Expiration Date: October 24, 2024.

Summary of Public Comment and Agency Response:

The Department received one comment from the public. A summary of the comment and the Division's response follows:

COMMENT: Parent and guardian, Laura A. Weinberg, MS-SLS/SLP, MBA, expressed disagreement with a provision excluding groups with "future interests," such as Disability Rights New Jersey, from being a member of a human rights committee (HRC), stating that Disability Rights NJ would have limited potential financial gains from actions of the HRC, and that the provision would exclude expert advocates from membership. The commenter also noted that ownership and other financial conflicts of interest are not named, and expressed that rather than exclude advocacy groups from membership, potential financial conflicts deemed relevant should be disclosed and made transparent.

RESPONSE: The Division thanks the commenter for her comment. The Division notes, however, that financial concerns are not the reason groups that may represent an individual's future interests are not to be appointed as members of an HRC. Rather, as stated in the rules, such groups have a role and authority that exists independent of the HRC. This role must be independent of the HRC to allow for proper advocacy on behalf of individuals. The Division also notes that pursuant to N.J.A.C. 10:41A-3.1(e), the rules would allow advocates to become members of HRCs, as membership may include individuals with developmental disabilities, guardians or family members of individuals with developmental disabilities, persons with experience and background with rights issues, and persons with prior experience serving on HRCs, among others. Finally, the rules require a member of the HRC to abstain from voting on any matter in which he or she has a conflict of interest, which would include potential financial conflicts.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments are not subject to any Federal requirements or standards.

Full text of the rules readopted with amendments can be found in the New Jersey Administrative Code at N.J.A.C. 10:41A.

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:41A-1.2 Scope

The rules in this chapter establish the composition and operation of the Human Rights Committee in developmental centers, the Office of Community Services, and in the provider agencies and facilities under contract with or regulated by the Division.

10:41A-1.3 Definitions

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Administrator" means the Chief Executive Officer (CEO) of a developmental center, the Community Services Administrator, or the Executive Director or CEO of a provider agency under contract with, or regulated by, the Division.

... "Chief Executive Officer (CEO)" means the person having administrative authority over, and responsibility for, a provider agency under contract with the Division, a State-operated developmental center, or a private residential facility licensed under N.J.A.C. 10:47.

... "Committee meeting minutes" or "minutes" means a tangible record of the HRC meeting. Minutes shall include, but are not limited to: the date and time of meeting, who called it to order, who attended, all motions made, any conflicts of interest or abstentions from voting, when the meeting ended, and who drafted the minutes. Minutes shall include a brief summary of each matter addressed, the discussions conducted, a short statement of each recommendation made by the Committee, and a brief explanation of the rationale for the recommendation.

"Community services administrator" means a person or his or her designee having administrative authority and responsibility over a community services unit.

... "Human Rights Committee (HRC)" means a group comprised of affiliated and nonaffiliated professionals, individuals served, advocates and/or interested persons from the community at large who function as an advisory body to the CEO, Executive Director, or Community Services Administrator, on issues directly or indirectly affecting the rights of individuals served. At least two members are impartial outsiders, in that they would not have an interest represented by any other of the required members or the facility itself.

... "Non-affiliated member" means a member of a committee who is not employed by the service component, facility, or agency. This includes members of the New Jersey Council on Developmental Disabilities or former residents and staff of the facility.

...

“Under contract” means a provider under a written agreement with the Division or a provider approved by the Division to provide disability services to individuals who are eligible to receive services from the Division.

SUBCHAPTER 3. MEMBERSHIP OF THE HUMAN RIGHTS COMMITTEE

10:41A-3.2 Appointment of chairperson and vice-chairperson

(a) (No change.)

(b) The chairperson and vice-chairperson may be staff members or individuals from outside the developmental center, Community Services unit, agency, or facility.

(c)-(d) (No change.)

10:41A-3.5 Orientation to the Human Rights Committee

Individuals who are appointed to the HRC shall receive, from the developmental center, Community Services unit, facility or agency, at a minimum, informational and instructional material relevant to the services provided by the HRC.

SUBCHAPTER 4. RESPONSIBILITIES OF THE HRC

10:41A-4.4 HRC procedures

(a) The chairperson shall determine if the issues addressed in the referrals constitute an actual or potential infringement upon the free exercise of an individual's rights. If the chairperson determines that the referral should not be reviewed by the Committee, he or she shall draft an explanation for the next Committee minutes and shall review it with the full Committee, which shall be the final arbitrator of any concerns regarding the relevancy of referral issues. If the request for HRC review was initiated by the individual or his or her legal guardian, the chairperson shall provide a written explanation why the referral should not be reviewed by the HRC.

(b) The HRC chairperson shall immediately review emergency referrals with the Administrator. Such referrals shall be reviewed expeditiously during emergency meetings of the Committee. Routine referrals will be addressed during the next scheduled Committee meeting. The Administrator or guardians serving individuals may approve necessary emergency treatments. Such issues shall be reviewed by the HRC at a subsequent meeting.

(c) (No change.)

(d) The individuals with potential rights restrictions and their guardians shall be invited to attend the meeting.

(e) The individuals listed on the agenda shall have their client records made available for the meeting, if necessary.

(f) (No change.)

(g) The HRC members shall carefully review each issue and the data presented to analyze risk, evaluating alternatives and assuring rights are not recommended for restriction due to staff convenience. They shall provide a consensus based upon this discussion. If necessary, the HRC shall include recommendations for further actions to the respective Administrator.

(h) The HRC shall provide, in writing, to the Administrator, a copy of all recommendations within 10 working days of the meeting. The HRC chairperson may provide a verbal recommendation to the Administrator if immediate implementation is deemed necessary.

(i) The Administrator, or designee, will respond in writing to the HRC chairperson, as well as the individual or his or her legal guardian, within 10 working days on routine referrals, or immediately on emergency referrals, regarding the acceptance, qualified acceptance, or non-acceptance of the recommendations. The Administrator shall explain the basis for the HRC review and the rationale for his or her decisions.

(j) The chairperson shall incorporate the Administrator's decisions and comments into the minutes of the meeting, which will be distributed to the Committee members as the first agenda item of each meeting. The Committee shall review the Administrator's responses and implementation plan. The chairperson shall then outline the

Administrator's decisions to the person or persons who presented the referral to the HRC.

(k) A copy of the notification of the decision to the individual or his or her legal guardian, as indicated in (i) above, shall be maintained in the client record.

(l)-(m) (No change.)

10:41A-4.5 Conflict of interest

(a) (No change.)

(b) A conflict of interest shall be determined to exist if the HRC member in question is the person who submitted the referral for review by the HRC; the person is a member of the BSC and it is a recommendation of the BSC that is the matter before the HRC; or the HRC member is in any way directly involved in the matter before the HRC. The chairperson shall make the final determination whether a conflict of interest exists.

(c) Representatives of legal services, such as the Disability Rights New Jersey or other agencies, who may represent future individual interests, shall not be appointed members of an HRC as defined in this chapter. Their role and authority exist independent of this advisory body.

10:41A-4.6 Dispute resolution

(a) Where the individual, guardian or advocate disagrees with the decision of the Administrator, the individual, guardian or advocate may submit a written statement of disagreement. This statement of disagreement shall be sent, prior to the next HRC meeting, to the Administrator for reconsideration and resolution. The Administrator shall notify the chairperson of the HRC, in writing, of any disagreements and resolutions. This statement shall be maintained in the client record.

(b) (No change.)

SUBCHAPTER 5. RESPONSIBILITIES OF HRC CHAIRPERSON

10:41A-5.1 Responsibilities of the chairperson

(a) The chairperson of the Committee shall be responsible for the following:

1. Presiding at meetings and performing all duties relevant to the office of chairperson. The chairperson shall also appoint sub-committee chairpersons;

2.-7. (No change.)

10:41A-5.2 Minutes of the meeting

(a)-(b) (No change.)

(c) Copies of the HRC minutes within the developmental centers and Community Services units, shall be forwarded to the Assistant Commissioner within two weeks of the date of the meeting.

(d) Community Services HRC meeting minutes shall be forwarded to the Supervisor of the DDD Quality Improvement Unit.

(e)-(g) (No change.)

SUBCHAPTER 6. RESPONSIBILITIES OF AGENCIES UNDER CONTRACT WITH OR REGULATED BY THE DIVISION

10:41A-6.1 Agency HRC

(a) Agencies should have their own HRC. Those agencies unable to establish an HRC may utilize an HRC within the Division Community Services Office upon agreement with the Community Services Administrator.

(b) Any concern about the general functioning of the Committee shall be resolved between the CEO or executive director of an agency and the chairperson of the Committee. If these concerns cannot be resolved, the matter shall be referred to the Community Services Administrator for resolution.

10:41A-6.3 Membership of agency human rights committees

(a) (No change.)

(b) The Division may assign an observer who is not a voting member of the Committee. The observer shall be familiar with the agency or facility, its manual, and the general Committee functions.

1. Should the observer have concerns about the agency or facility, he or she shall bring these concerns to the CEO of a private residential

facility or executive director of an agency and Community Services Administrator.

(c) Any change in the membership of the Committee shall be reported to the Community Services Administrator within 30 days.

10:41A-6.4 Notification of agency HRC meetings

The agencies shall provide a schedule of the agency HRC meetings to the Community Services Administrator and shall notify the Community Services Administrator immediately of any emergency meetings.

10:41A-6.5 Minutes of meetings

(a) The minutes of agency HRC meetings shall be forwarded to the Community Services Administrator for review in accordance with N.J.A.C. 10:41A-5.2.

(b) A copy of the agency HRC minutes is to be available for review by Division staff as authorized by the Assistant Commissioner.

(c) (No change.)

INSURANCE

(a)

DEPARTMENT OF BANKING AND INSURANCE OFFICE OF CONSUMER PROTECTION SERVICES Insurance Producers Standards of Conduct; Marketing Activities for Which a Person Must Be Licensed as an Insurance Producer Unfair Trade Practices

Adopted Amendments: N.J.A.C. 11:17A-1.2 and 2.3

Proposed: June 19, 2017, at 49 N.J.R. 1658(a).

Adopted: October 26, 2017, by Richard J. Badolato, Commissioner, Department of Banking and Insurance.

Filed: October 26, 2017, as R.2017 d.202, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:22A-26 et seq.

Effective Date: November 20, 2017.

Expiration Date: August 14, 2024.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received written comments from the following:

1. Fox Rothschild, LLP;
2. NJM Insurance Group;
3. The Professional Insurance Agents of New Jersey;
4. McCormick and Priore, P.C.;
5. Family Focus Financial Group;
6. The American Insurance Association;
7. Allstate New Jersey Insurance Company;
8. The Internet Association;
9. New Jersey Land Title Association; and
10. The Insurance Council of New Jersey.

COMMENT: All of the commenters supported, in whole or in part, the proposed amendments, with several of those commenters expressing concerns with certain aspects of the rulemaking, as set forth in subsequent comments.

RESPONSE: The Department appreciates the support of its rulemaking.

COMMENT: One commenter requested that the rules be revised to clarify that only offers that are conditioned upon the sale of insurance, that is, an offer for an item of value in exchange for the purchase or renewal of an insurance policy, are prohibited by the rules.

Similarly, another commenter requested that the Department clarify that under the enabling statutes, in order for an act to be considered a prohibited rebate or inducement, the item of value that was provided to the insured or potential insured must be outside the provisions of the insurance contract, and it must have been provided conditionally upon

the purchase or renewal of an insurance policy. The commenter suggested that N.J.A.C. 11:17A-2.3 be revised to include the following language "So long as the item of value that was provided is not conditioned upon the purchase or renewal of an insurance policy, the act shall not be deemed to violate this regulation."

RESPONSE: Upon review, the Department has determined that no change is required. The purpose of the proposed amendments is to codify the provisions of Bulletin No. 11-22 regarding permitted and prohibited activities with respect to rebates and inducements, as well as to increase the existing monetary threshold from \$25.00 to \$100.00. N.J.A.C. 11:17A-2.3(a) states the following: "No insurance producer shall offer, make or give, or permit to be offered, made or given, to any person directly or indirectly, an inducement to purchase insurance other than that plainly expressed in the insurance contract." The rules as they exist now do not limit providing "inducements" only to cases where the provision of the consideration is conditioned upon the purchase of insurance. Indeed, the purpose of prohibiting inducements is to prohibit producers (and others) from offering consideration to unfairly "sway" a prospective insured's decision whether to purchase insurance. An impermissible inducement arises if a producer offers something to a prospective or actual consumer that is valued above \$100.00 (and not otherwise exempted by the rules) to enable the opportunity for the producer to engage in the sale, solicitation, or negotiation of insurance. In these circumstances, the producer is attempting to induce the purchase of an insurance product through the provision of the thing of value. Purchase of the insurance is not necessary to find an inducement. In sum, the suggestion by the commenter would expand permitted activities beyond those currently allowed and is inconsistent with the plain meaning of inducement, that is, a thing of value that could persuade or influence someone to do an act.

COMMENT: Several commenters expressed concern with proposed N.J.A.C. 11:17A-2.3(h), which provides that services or monetary benefits provided for free or at a discounted price that inure to the personal benefit of the person and that are largely extraneous to the coverage being purchased or the insurance services being provided by an insurance producer, or services offered in a discriminatory manner as an inducement to write or move business, shall be deemed a prohibited rebate(s) or inducement(s). Examples of such services or benefits that the Department would consider prohibited rebates or inducements include:

1. Payments of cash or cash equivalents of greater than \$100.00;
2. Provision of tickets to a concert or event with a value greater than \$100.00; and
3. COBRA, HRA, HSA, and FSA-administration services offered only to new customers who agree to change producers or insurers, which are not otherwise provided to in-force accounts.

One commenter stated that the initial sentence of subsection (h) is confusing and could be interpreted in several different ways. In addition, the commenter stated that the three examples listed are unnecessary because the definition of "inducement" clearly includes each.

Another commenter stated that the language is unnecessary because it does not clarify an ambiguity and could cause more ambiguity. The commenter stated that the definition of "inducement" (both the current and the proposed definition) is clear in that it encompasses anything that has a "cost" or "redeemable value greater than" the threshold amount. This commenter stated that, unlike proposed N.J.A.C. 11:17A-2.3(g), which lists acceptable services and offerings that were susceptible to inconsistent treatment under the original rules, and that are exceptions to the general rule, proposed N.J.A.C. 11:17A-2.3(h) only provides examples of prohibited offerings that fit squarely within the definition of "inducement." Further, the commenter believed that the explanatory sentence that precedes these examples tends to add ambiguity as opposed to clarification (for example, the commenter questioned whether only services that have a value in excess of the threshold and that are "offered in a discriminatory manner" would be prohibited under the rule).

Another commenter suggested that N.J.A.C. 11:17A-2.3(h) be revised to read as follows (suggested additions in boldface):

Services or monetary benefits provided for free or a discounted price that inure to the personal benefit of the **person, that are**